

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3120 OF 1991

with

CIVIL APPLICATION NO.11113 OF 1997

in

SPECIAL CIVIL APPLICATION NO.3120 OF 1991

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

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DR AMBEDKAR DALIT PARISHAD & ORS.

VERSUS

AHMEDABAD TEXTILE INDUSTRIES RESEARCH ASSOCIATION & ORS

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Appearance:

MR MC BHATT for petitioners

MR NANDISH CHUDGAR for Respondent No.1

None present for other Respondents

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Coram: MR.JUSTICE S.K. Keshote,J

Date of decision: 18/11/1999

#. The petitioners, by this writ petition under Article 226 of the Constitution of India, are praying for directions to the respondent No.1 by a writ of Mandamus or any other appropriate writ, order or direction, directing the respondent No.1 to follow the reservation policy by making appointments 15% from candidates belonging to the Schedule Caste and 7.5% from candidates belonging to Schedule Tribe. It has further been prayed that respondent No.1 may be restrained from making any appointment to the post of any of the categories mentioned in Annexure=C till the quota of 15% for Schedule Caste and 7.5% of Schedule Tribe is not completed in each category. Second prayer has been made for directions to the respondents No.2 and 3 to stop the financial assistance and grant to the respondent No.1 as they have failed to comply with the directions issued by the Government of India as per Annexure=A. As usual, prayer has been made for grant of interim relief.

#. In para-2 of the special civil application, the petitioners stated that the respondent No.1 is a Society registered under the Societies Registration Act of 1860 and is established with an object to carry out research in connection with textile industry. It has further been stated that respondent No.1 gets grant of approximately 80% of expenditure incurred by it from the Government of India. The respondent No.1, as per petitioner's case, is managed and governed by its own constitution by a autonomous body. In the special civil application, the petitioners have nowhere stated that the respondent No.1 is a 'State' or agency of State or instrumentality of State within the meaning of Article 12 of the Constitution.

#. The learned counsel for respondent No.1 raised a preliminary objection regarding the maintainability of this special civil application. In his submission, the respondent No.1 is not a 'State' or agency of State or instrumentality of State within the meaning of Article 12 of the Constitution of India and as such, it is not amenable to writ jurisdiction of this Court under Article 226 of the Constitution. In support of his contention, Mr.Nandish Chudgar, learned counsel for respondent No.1, placed reliance on decision of this Court dated 16th April, 1999, in the case of J.B.Dhoriyani & Ors. v. ATIRA, in Special Civil Application No.11193 of 1998.

#. The learned counsel for the petitioner does not dispute the decision of this Court on which reliance has

been placed by learned counsel for the petitioner. In his submission, even if this Society does not fall under the category of a 'State' or agency of State or instrumentality of State within the meaning of Article 12 of the Constitution as it is discharging public duties and owes public responsibility, a writ can be issued against it. In support of this contention, Mr.Bhatt, learned counsel for the petitioner, placed reliance on the decision of this Court in the case of A.P.Shah & Ors. v. B.M.Institute of Mental Health reported in 1986(2) GLR 910. It has next been contended by Mr.Bhatt, learned counsel for the petitioner, that the order passed by this Court on 23rd December, 1991, has not been complied with by respondents and the respondents may be given directions to comply with that order. Lastly it is contended that in the petition, the petitioners are not only claiming reliefs against the respondent No.1, but they are claiming relief against respondents No.2 and 3, who are amenable to writ jurisdiction of this Court.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. In the special civil application, the petitioners have not given out the Memorandum and Articles of Association of the Society or any other document under which it is provided as to what are the functions and duties to be discharged by respondent No.1. In the special civil application, the respondent No.1 is stated to be to carrying out research in connection with textile industry. In the special civil application, even there is no whisper by petitioners what to say to aver that the respondent No.1 is a 'State' or agency of State or instrumentality of State within the meaning of Article 12 of the Constitution. Only a statement of fact has been made that 80% of the amount of expenditure incurred by respondent No.1 comes from the coffers of the Union of India. Even if it is taken that 80% of the amount of expenditure incurred by respondent No.1 is received by it from the Government of India, only on the basis of it, it is difficult to hold, what to say to accept, the Society to be a 'State' or agency of State or instrumentality of State within the meaning of Article 12 of the Constitution. I do not find any material on record wherefrom it can be inferred, accepted or held that the Government of India or State of Gujarat have any pervasive control over the Society. Even the Constitution of the Managing Committee of the Society has not been given out by petitioner. The petitioners have also admitted the Society to be an autonomous body. Not only this, in the case of J.B.Dhoriyani & Ors. v. ATIRA

(supra), this Court has held the respondent No.1=Society not to be a 'State' or agency of State or instrumentality of State within the meaning of Article 12 of the Constitution of India relying on Division Bench decision of this Court in the case of Gujarat State Fertilizer Corporation, reported in 1995(2) GLH 179, and two decision of the Apex Court, namely, (i) Ajay Hasia's case reported in 1981(1) SCC 722, and (ii) Case of Council for Scientific & Industrial Research, reported in 1975(1) SCC 485. This Court has also referred to case of Institute of Constitutional and Parliamentary Studies reported in 1988(1) SCC 236.

#. The preliminary objection raised by learned counsel for respondent No.1 deserves to be accepted and it is hereby held that the respondent No.1 is not amenable to writ jurisdiction of this Court. The decision of this Court in the case of A.P.Shah & Ors. v. B.M.Institute of Mental Health, Ahmedabad (supra) is of little help to the petitioners for the obvious reason that it is not the case pleaded or established by petitioners that respondent No.1 is carrying on any function or duty laid down by the statute or it is a set up and/or an institute, governed by any statute or it discharges public duties and responsibilities.

#. So far as the contention of the learned counsel for the petitioner that this Court's order dated 23rd December 1991 is not complied with is concerned, it is suffice to say that even it is so, how it has any relevance on the merits of the matter. If that order was not complied with at the relevant time, the petitioners had all the right to take appropriate action for non compliance of the same, which appears to have not been taken. Merely because this Court's order is not complied with by respondent No.1, this writ petition cannot be held to be maintainable or only on this ground, the respondent No.1 cannot be held to be a 'State' or agency of State or instrumentality of State within the meaning of Article 12 of the Constitution of India. The matter has to be decided on merits. Otherwise also, it is no more res integra that whatever interim order passed or interim relief granted by the Court is always subject to final decision given in the matter and the same merge in the final decision. It is true that the petitioners are seeking relief against respondents No.2 and 3 but if we go deep in the matter, this relief also is ancillary to the main relief claimed against respondent No.1. In fact, it is relief which the petitioner is claiming as an alternative relief where the first relief is not granted.

#. Otherwise also, in case the respondent No.1 is not a 'State' or agency of State or instrumentality of State within the meaning of Article 12 of the Constitution of India, the relief prayed for by petitioner against respondents No.2 and 3 cannot be granted in this special civil application. These are the matters to be taken care of by respondents No.2 and 3 for which remedy to the petitioners is not of this writ petition. Remedy lies with respondents No.2 and 3 and for which the petitioners have to approach them by filing a representation. If ultimately on representation, the respondents No.2 and 3 are satisfied that for the reasons to be recorded, benefit of grant cannot be extended to respondent No.1, it has all the power and competence to discontinue the same, but this Court cannot grant such relief. Otherwise, it will amount to granting of the relief indirectly to the petitioner which otherwise this Court has decided not available to the petitioners.

##. In the result, this special civil application fails and the same is dismissed. However, dismissal of this writ petition will not come in the way of the petitioners to file appropriate representation for their grievances made in this special civil application to the respondents No.2 and 3 and the respondents No.2 and 3 are to take care of the matter and decide the representation, if any filed, expeditiously, say within three months from the date of receipt thereof. Rule is discharged. Interim relief which has been granted by this Court earlier stands vacated. No order as to costs.

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